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MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

Judith Newman, as Personal Representative)
of the Estate of Karlye Newman,)
Plaintiff,) Cause No.: DV-06-164
-vs-)
Spring Creek Lodge Academy; Spring Creek Lodge, LLC;) PLAINTIFF'S BRIEF IN
Spring Creek Lodge, Inc.; Cameron Pullan; Chaffin Pullan;) SUPPORT OF MOTION
Robert Lichfield; Teen Help, LLC; Premier Educational) FOR SUMMARY
Systems, LLC f/k/a World Wide Association of Specialty) JUDGMENT
Programs, Inc.; Peacock Enterprises, LLC; National Contract)
Services, LLC; and John Does 2 through 5, 9 through 20,)
Defendants.)

INTRODUCTION

This is a wrongful death and survivorship action arising out of a suicide at a "tough love" boarding school. Plaintiff's daughter hanged herself after six months of accelerating depression, suicidal statements and suicide attempts.

Defendants include the school (Spring Creek Lodge), its proprietors, and its on-site mental health facility. In addition, they include a Utah corporation called WWASP (the Worldwide Association of Specialty Schools) and associated companies and individuals.

The WWASP Defendants developed a "tough love" program which they franchised through a network of boarding schools. They aggressively marketed these schools, representing to parents that they were appropriate for suicidal youth.

Uncontradicted expert testimony shows that WWASP's programs were in fact grotesquely unsuitable and dangerous for youths with mental health problems. The punitive and isolating nature of the programs tended to enhance depression and suicidal tendencies. Moreover, staff were trained in a manner which was likely to make them ignore or misinterpret signs of depression.

Plaintiff now moves for partial summary judgment holding all the Defendants liable for joint tortious conduct. The Restatement (Second) of Torts imposes joint liability for torts committed "in concert," as well as for giving "substantial assistance" to others who commit tortious acts.

Montana applies this Restatement section. The court should hold all the Defendants jointly liable for each other's torts. The court should also hold that the evidence of record shows that torts were committed as a matter of law.

STATEMENT OF FACTS

In a previous brief, Plaintiff marshaled extensive evidence concerning Spring Creek Lodge and Karlye Newman's experience there. (See Pl. Supplemental Brief in Opposition to Defendants' Summary Judgment Motion, filed Sept. 24, 2008, pp. 3-16) Plaintiff hereby incorporates that Statement of Facts by reference in this brief.

The following Statement of Facts has been drafted to minimize references to evidence discussed in the previous brief. This statement will focus on depositions and other evidence acquired since the prior brief was filed. In particular, the following statement will focus on the WWASP entities and on the testimony of expert witnesses.

A. Expert Evidence: The History of WWASP and its Affiliated Programs

Plaintiff's expert Maia Salavitz is an investigative journalist. She wrote the first history of troubled-teen programs, entitled *Help at Any Cost*. (Ex. 1, Salavitz Aff., ¶¶ 1-2) She has done extensive research concerning WWASP, its organizers and its programs. (See *id.*, ¶¶ 7, 15, 23)

Salavitz states that WWASP has its roots in the 1960s program Synanon and in 1970s Large Group Awareness Trainings (LGATs). WWASP's programs were designed by David Gilcrease, who was a trainer in LGAT seminars. (Ex. 1, Salavitz Aff., ¶¶ 7, 15, 23)

WWASP's program includes highly secretive seminars for students and for parents. Salavitz relates:

[P]articipants have to choose a small number of people to "live," by granting them seats on a "lifeboat," condemning the majority of the group to "die." This same exercise, where kids have to shout "You die" at those they don't choose to save, has been described to me by multiple teen participants in WWASP seminars.

* * *

[P]articipants are taught that they are responsible for everything that happens to them in life—even being raped or abused. They are taught to feel rather than think and to obey the seminar leader without question. Any dissent is met with

harsh public confrontation and humiliation.

* * *

Research into whether therapy groups harm or heal has shown that groups with a strong authoritarian leader who is confrontational are most likely to hurt; one study that included a Synanon-style group found that 9.1% had psychological damage that was still apparent six months later. After losing thousands of dollars to judgments related to suicides and psychological damage, Life Spring began warning participants with psychiatric histories or taking medications not to attend its seminars, but WWASP requires that teenagers with conditions ranging from addiction to bipolar disorder participate in order to graduate.

(Ex. 1, Salavitz Aff., ¶¶ 4-6 (emphasis added))

Salavitz describes the history of WWASP and its associated entities. Robert Lichfield and Gilcrease met at an LGAT seminar in the 1980s. They decided to start a network of troubled-teen programs and market them directly to parents. (Ex. 1, Salavitz Aff., ¶¶ 9-10)

Salavitz describes the founding of Spring Creek Lodge and 17 other schools and programs associated with Lichfield, Gilcrease, and their corporate entities. Many of those schools have since been closed after intervention by public authorities. (Ex. 1, Salavitz Aff., ¶¶ 10-12) Salavitz states:

Over the years, WWASP has drawn the attention of regulators in many states and countries due to its harsh practices. ... [I]n 1996, Mexican officials raided Sunrise Academy, discovering teens who had been held in isolation in stress positions for long periods of time. The program closed. In 1998, Czech child abuse investigators found that the same owners who had run the Mexican program were using similar tactics at Morava Academy, including prolonged isolation of teens and denial of bathroom access. Morava shut down shortly thereafter. That same year, Utah regulators found that Brightway Adolescent Hospital failed to report child abuse and referred almost every child—no matter what the diagnosis was—to long term treatment at WWASP facilities. Simultaneously, the U.S. State Department was investigating Paradise Cove for unhealthy conditions and child abuse—the Samoan government followed up and that program was shuttered. In 2001, Mexican officials raided Casa by the Sea, finding “deplorable” conditions, including children held in outdoor dog cages. A human rights abuse investigation also resulted in the closure of Dundee Ranch Academy in Costa Rica.

(Ex. 1, Salavitz Aff., ¶ 22 (emphasis added))

Salavitz describes the "tough love" methods employed by WWASP's affiliates. They involve harsh discipline and focus on compliance and obedience. She states, in part:

On the lowest level, teens are not permitted to talk to anyone except a "buddy" who is a student at a higher level who can impose punishments. No contact with the outside world—even with parents—is allowed.

Teens "earn" points through compliant behavior and can lose them by misbehaving. Once teens have achieved a certain number of points, they can—if they also are approved by their peers—attain a higher level and the greater privileges associated with it. However, even minor misbehavior can often lead to loss of points and a reduction in level—and if this happens, the whole process must be repeated before the student can regain the lost privileges.

For major violations or for large numbers of minor ones, punishments are severe. A common "consequence" is isolation, often for days or even weeks or months, sometimes in stress positions (kneeling on a hard floor for hours, lying on one's belly for hours).

* * *

Aside from the seminars, the main "therapeutic" element of the program is group therapy, conducted by peers and led by an employee who is not required to have any outside training or education in therapy. This "therapy" is brutally confrontational and aimed at breaking through the teen's psychological defenses, producing anger, tears and confession. At least an hour a day is usually devoted to this, and it frequently involves all of the teens focusing on one person and humiliating him or her, often in foul language.

(Ex. 1, Salavitz Aff., ¶¶ 16-19 (emphasis added))

Salavitz concludes her affidavit with a historian's opinion as to the causes of death and injury to students in WWASP-associated programs. She observes:

"Tough love" programs have an inherent danger: because they view teenage participants as "liars" and "manipulators," genuine health problems often go unrecognized. A further problem is that both the leadership and the staff who are in charge of the kids for the vast majority of the time are not trained in medicine or psychology. For example, neither David Gilcrease nor Robert Lichfield has training in medicine or psychology. Neither man even has an undergraduate psychology degree. Staff are not required to have completed high school—let alone college. So, not only do they often not know what signs indicate severe

mental or physical problems, they are also told to ignore complaints and punish rather than investigate extreme behavior such as significant weight loss, suicide threats and defecating or urinating on oneself. Consequently, if a child develops a severe medical problem, it will often go untreated, sometimes until it is too late.

A further problem is the ideology of these programs. The ideas that everyone is responsible for everything that happens in his or her own life and that the program has a solution for every problem mean that staff are absolved of concern for the well-being of youth. Signs of mental illness are seen as willful behavior, not evidence of need for professional help. Framing all problems as behaviors that can be solved by the program means that staff are left without the ability to recognize life-threatening illnesses and seek professional help.

(Ex. 1, Salavitz Aff., ¶¶ 24-25 (emphasis added))

B. The Credentials of Plaintiff's Experts

Besides Salavitz, Plaintiff has retained several expert witnesses to assess the Defendants' programs. These experts all are highly qualified, and their assessments almost all are unrebutted on the record.

Dr. Christopher Bellonci is a board-certified child and adolescent psychiatrist. He taught at Harvard Medical School, and is medical director at the Walker School, a facility for serving troubled youth. He has written practice standards for the American Academy of Child and Adolescent Psychiatry. He recently testified in a Congressional hearing on "Child Abuse and Deceptive Marketing by Residential Programs for Teens." (Ex. 2, Bellonci Depo., pp. 15-26, 199-200)

Dr. Paul Quinnell is a clinical psychologist and an expert in suicide prevention. He is a professor at the University of Washington School of Medicine and the president and CEO of a suicide-prevention institute. He has written several books in the field and was the editor-in-chief of *Preventing Suicide: The National Journal*. (Ex. 3, Quinnell Depo., pp. 14-25, Quinnell Depo. Ex. 3)

Karl Rosston is a licensed clinical social worker. He is Suicide Prevention Coordinator for the Montana Department of Public Health and Human Services. He provides suicide prevention training and monitors suicide prevention programs statewide. He also has held supervisory positions in residential facilities for children. (Ex. 4, Rosston Depo., pp. 8-13)

Dr. Mike Jakupcak is a psychologist and an education professional. Prior to retirement, he was a professor of education at the University of Montana. He is an expert in learning disabilities and special education. (Ex. 5, Jakupcak Depo., pp. 158-67)

C. Expert Evidence: Defendants' Improper Program Model

Plaintiffs' experts gave a detailed critique of the program model used by the WWASP Defendants and implemented at Spring Creek Lodge. They stated that the model was completely inappropriate for depressed, suicidal youth. (Ex. 2, Bellonci Depo., pp. 39-41, 163-64, 231-35; Ex. 3, Quinnett Depo., pp. 105-06)

Defendants' program model is behavioristic. It "tries to force a certain way of behaving," discouraging negative behaviors with punitive consequences. Frequently these involve isolation -- the "intervention room" (solitary confinement), isolation from peers, no contact with family until sufficient points are earned. (Ex. 2, Bellonci Depo., pp. 40, 52-53, 136, 163-64, 233)

The experts stated that this model may be appropriate for dealing with conduct disorders, or for training Marine Corps recruits -- but not for a fragile 15-year-old girl. (Ex. 2, Bellonci Depo., pp. 163-64; Ex. 3, Quinnett Depo., pp. 105-06) The model is "absolutely contraindicated for a youth like Karlye Newman" who exhibits depression, a suicidal history, and suicidal ideation. (Ex. 2, Bellonci Depo., pp. 40, 41, 139; Ex. 3, Quinnett Depo., pp. 99-100)

The experts stressed that "we don't punish the mentally ill" (Ex. 3, Quinnett Depo., p. 106) and "you don't punish children for displaying depressive symptoms and suicidal

behaviors." (Ex. 2, Bellonci Depo., p. 69) Such punishments lack any scientific basis, are not therapeutic, and in fact worsen the disorder. (Id.)

Dr. Bellonci specified numerous punitive elements in the program and their destructive impact on a child like Karlye. He testified, in part:

Q What is your definition of punitive?

A Carrying a bucket of rocks for a week when you have a back injury to start, shaming kids by having them wear transgendered clothing. ... Isolating them from their peers, cutting them off from their family, denying them access by voice mail, by e-mail and phone to their friends and family.

* * *

In the case of Karlye, she was consequence in a behavioral way when she was expressing that she was depressed and suicidal. That violates any standard of appropriate mental health treatment, care for someone in your custody and, I would argue, human ethics.

* * *

My professional opinion is that these interventions were punitive and were contraindicated and harmful for Karlye, who was presenting with clear signs and symptoms of depression and suicidal ideations, who was injuring herself, who was saying repeatedly she wanted to die, that she would kill herself, that she needed therapy, that this was the wrong program for her, that she wanted to go to a psychiatric facility on multiple days over the course of April, May, June, July, August, September and ultimately, to her death in October.

(Ex. 2, Bellonci Depo., pp. 136, 138, 139 (emphasis added))

Dr. Bellonci emphatically stated that the program model utilized at Spring Creek violated the standard of care. (Id., pp. 28-30, 57-58, 62-63, 77-80) Among other matters, he cited the cutting off of contact of depressed youth with their families:

[T]he model doesn't support standards of care for mental health treatment. When you've got a youth who is presenting with signs and symptoms of depression and suicidality, one of the very first interventions would be to bring in the parent, and in a completely transparent way, review the concerns and develop a safety or risk plan and to determine whether a high level of care is warranted.

* * *

Q So, how did Spring Creek Lodge violate that standard in your opinion?

A They established a program model that requires the youth to get a certain number of points, to achieve a certain level before they are allowed contact with the family.

They limit phone calls between the youth and the family. They limit and read mail. They limit e-mail contact. They interpose themselves between the youth and the family acting as the mediator of communication through their family rep model.

Families are similarly discouraged to visit, leaving an already troubled youth further isolated from their support systems.

(Id., pp. 57-58, 79-80 (emphasis added))

Dr. Bellonci stressed that all the Defendants violated standards of care, insofar as they supported this program model:

I think anybody who was receiving compensation to support the program model would have some culpability in Karlye's death. ... [I]f they are supporting a program model that advertises that the model can serve youth who are suicidal, experiencing mood swings, angry, experiencing low self-esteem, then they're marketing a service to parents that fails to meet the standards of basic mental health treatment and adequate care for those youth.

* * *

It's my understanding that Spring Creek Lodge's program model was largely supported by the WWASP schools and that some of the program model was derived from the Pullan brothers' previous experience at a WWASP school.

And so, it does seem like there is a link in that regard, that the contractors that were lending the program model to Spring Creek Lodge for a fee, were setting up a program model that would be inconsistent to meet the needs of Karlye Newman.

* * *

Q Are you going to render an opinion that the defendant National Contracting Services, LLC violated that standard?

A I don't know enough about what National Contracting Services actually provided to Spring Creek Lodge to answer that question, but if they had a role in perpetuating this model, which I believe the WWASP schools did, then yes.

(*Id.*, pp. 62-63, 66-67, 80 (emphasis added)) As will be shown below, ample evidence shows that all of the Defendants were involved in supporting the improper program model.

D. Expert Opinion: Defendants' Improper Educational Model

The experts stated that Defendants' self-teaching educational program was completely inappropriate for Karlye Newman. (Ex. 2, Bellonci Depo.; pp. 182-83, 235-39; Ex. 5, Jakupcak Depo., pp. 37-40) Dr. Bellonci testified:

My understanding is that it's a self-taught program, that youth are essentially given material to read independently, and then are assessed on their comprehension of what they have been given to read.

Based upon my experience as a child and adolescent psychologist, this would be completely inadequate for a child with learning disabilities compounded by the effects of depression on the ability of a youth to be able to concentrate and generate enough energy to be able to produce educationally.

(Ex. 2, Bellonci Depo., pp. 235-36 (emphasis added))

Michael Jakupcak testified extensively about the standard of care for special education for children with learning disabilities. The standard includes a prompt assessment of the child's needs, an individual plan of education, and ongoing assessment of the plan's effectiveness. (Ex. 5, Jakupcak Depo., pp. 10-11, 14-16)

Jakupcak testified that Spring Creek did not meet this standard of care. (*Id.*, pp. 37-40, 43-45, 47, 105-06, 122-23, 135-44, 145-46, 148-53) Spring Creek's personnel knew that Karlye had a learning disability, but did nothing significant to take it into account. (*Id.*, p. 106) They rigidly applied their preestablished model of instruction without considering any accommodations, modifications or changes. (*Id.*, pp. 128, 148)

Because of this rigidity, Karlye was compelled to study a single subject (health) for months on end. (Ex. 5, Jakupcak Depo., pp. 137-38, 240) She made little progress and gave overt signs of depression (writing, e.g., "I can't do this school anymore ... I just have given up I

am ... lifeless, drained;" "Having problems staying focused. Cannot concentrate. Hard for me to learn on my own. I have been here for 4 1/2 months. I have been stuck in 'health' course on the same chapter since 7/17/04;" "I never talk I don't do school I am way too stressed"). (Ex. 2, Bellonci Depo. Ex. 5 and Ex. 6: Spring Creek Lodge records, 7/22, 8/19, 9/7)

Jakupcak comments on Spring Creek's reaction to Karlye's struggles:

[W]henever she voiced concerns the reaction was a punitive reaction. So it was isolation. It was placement in the intervention room. It was, come on, it's your poor attitude. Let's get on with it. ... She's not working up to her capacity. She's manipulating. She's seeking attention."

* * *

[Spring Creek] didn't learn anything from her lack of success there. They didn't change anything. They didn't modify. ... And the fact that that was the only method of instruction must have been very damning for her to face failure after failure after failure day in and day out and not be successful and not have any escape from that.

* * *

They kept doing the same thing over and over and over again. Well, she's got to complete health. She has to complete this. If she's not, we're going to ... that intervention room. And she spent hours upon hours in the intervention room. And that's not effective. Kids are not placed in isolation for more than brief periods of time.

(Ex. 5, Jakupcak Depo., pp. 132, 142-44 (emphasis added))

Jakupcak's opinion is that Spring Creek's refusal to change its curriculum was a contributing factor to Karlye's suicide. (*Id.*, pp. 232-34) He states: "We know it was a factor because she talks about it and that's by her own self report ... I need somebody to help me here. I'm not being taught." (*Id.*, p. 234)

E. Expert Opinion: Defendants' Inappropriate Business Model

As discussed in Plaintiffs' earlier brief, Spring Creek Lodge was compelled to pay large fees to WWASP and its associated entities. (See Pl. Br. In Opp. To Def. Motion for S. J., pp. 4-

5) Thus, e.g.,

- Spring Creek had to pay Defendant National Contract Services 33 1/3% of all its gross revenues. (Ex. 6, Cameron Pullan Depo., pp. 40-43)
- "enrollment fees" of \$1,250 per student were paid to Defendant Teen Help and to other marketing entities. (*Id.*, pp. 46-47)
- Spring Creek paid WWASP itself an "association fee" of \$75 per student per month. (Ex. 7, Chaffin Pullan Depo., p. 15)
- Spring Creek's director, Cameron Pullan, stated that he sometimes was concerned that he "didn't have money enough to take care of the kids because there was so much going to these companies." (Ex. 6, Cameron Pullan Depo., pp. 72, 144-45; Ex. 7, Chaffin Pullan Depo., pp. 41-42)

Dr. Bellonci reviewed this evidence. He criticized Defendants' business model for creating conflicts of interest and for incentivizing enrollment of inappropriate students. (Ex. 2, Bellonci Depo., pp. 42-44, 82-83, 89-94, 142-43) Among other matters, he stated as follows:

The profit motive of the various companies supported taking youths who they were not prepared to meet the mental health needs of.

Q What evidence do you have to support that statement?

A The directors of the programs were receiving a per-student fee per day which incentivised taking more and more students.

The various corporate companies supporting the services of the school were also receiving a per-student reimbursement. The marketing company was receiving a per-student referral fee.

They were offering a reduction in fees to parents who would refer other youth to the program or one of the WWASP schools which would provide clear motivation to take more and more students.

There is evidence that the program grew very rapidly and were also taking students from other programs that were being closed.

There is evidence that the operators of the program had concerns that an undue number of resources were being sent away from Spring Creek Lodge to the various corporate entities, leaving their program less able to meet the needs of the

students in their program.

There is simultaneously a lack of evidence that they were screening children at admission for mental health needs and that, were they to identify them, they would have made a recommendation that the child not come to their program because they were not prepared to meet that child's needs.

(*Id.*, pp. 42-44 (emphasis added)) He elaborated further:

The referral fee that was provided to the marketers, almost everything about the corporate structure in a way, I believe, facilitated the program to grow and expand ... In their own depositions, [the Pullan brothers] talked about the financial compensation model and their concerns about excessive fees going to the various corporations, that they didn't have a lot of say in those contracts, they didn't feel like they could renegotiate them, and that it left Spring Creek Lodge with inadequate resources to meet the needs of the youth on the campus.

(*Id.*, pp. 82-83 (emphasis added))

F. Expert Opinion: Improper Marketing

Key points of evidence in this matter are the marketing materials which were circulated on behalf of Spring Creek Lodge. Brochures developed by the WWASP Defendants invited parents to enroll "suicidal" students and students with "mood swings," "anger," and "low self-esteem." (Ex. 2, Bellonci Depo. Ex. 8, p. 1; Ex. 6, Cameron Pullan Depo., pp. 66-67) Karlye's mother Judith saw this brochure, or one like it, before enrolling her at Spring Creek. (Ex. 8, Newman Aff., ¶ 9)

Judith called Teen Help, the WWASP Defendants' main marketing entity, before enrolling Karlye. A Teen Help marketer asked her if Karlye was "self-inflictive," and Judith reported Karlye's suicide threats. (Ex. 9, Newman Depo., pp. 128, 164-67, 252-58, 374-76) Teen Help's own record of the conversation, which was forwarded to Spring Creek, states that Karlye "tells parents and others that she will kill herself -- cutting -- scritches." (Ex. 9, Newman Depo. Ex. 5) The Teen Help representative told Judith that Spring Creek would "be happy to take her." (Ex. 9, Newman Depo., p. 131)

Judith also visited Spring Creek's Internet web site. (*Id.*, p. 142) The web site carried grandiose claims of "the most effective methods" for dealing with "depression, stress and lonely feeling," of helping students to "balance their mental state," to cope with "emotional traumas," and much else to like effect. (Ex. 10, Seamus Manley Aff., Ex. A)

Dr. Bellonci strongly criticized this marketing. He stated:

If you're going to market yourself as a program that can serve youth with mood swings, suicidal, anger, low self-esteem and poor academics, then I believe you have a responsibility to be able to meet the mental health needs of youth presenting with these, with that profile.

The owners of Spring Creek Lodge certainly did not have a background that would allow them to be capable of meeting the youths' needs. There is no indication that the staff were any better capable, and when they did refer to the [mental health] facility that they also owned at Cabinet Mountain, she was seen by someone with no higher than a high school diploma.

* * *

I think the issue with [Teen Help] would be the marketing and how well the marketing matches up with the services that were actually delivered in the program model.

* * *

The model of getting youth into Spring Creek Lodge is a concerning one, and I believe facilitated Spring Creek Lodge taking youth into their program that they were ill-equipped to meet the needs of, and in the case of Karlye Newman, specifically resulted in her worsening condition and ultimate suicide.

(Ex. 2, Bellonci Depo., pp. 36, 65, 84 (emphasis added))

Dr. Quinnett, the suicide prevention expert, also strongly criticized the recruitment of suicidal students to Spring Creek. He stated:

[Y]ou should, in my view, not be recruiting suicidal students to your facility when your staff are not trained in even how to recognize it.

And if you think it's all manipulation and game playing and you punish it, this is what can happen.

(Ex. 3, Quinnett Depo., p. 125 (emphasis added))

G. Spring Creek's Notice of Danger to Karlye Newman

Documents produced by the Defendants confirm that Spring Creek Lodge repeatedly had notice of the danger to Karlye Newman. From her admission in April 2004 to the eve of her death in October, scores of entries in the Spring Creek records document her precarious mental state. The records repeatedly describe suicide threats and self-inflicted injuries, extended placements on "high risk" status, alarming emotional volatility, complete educational failure, and ongoing episodes of punishment in the "intervention room."

152 separate record entries showing danger to Karlye have been filed with this motion. (Ex. 2, Bellonci Depo. Ex. 6) An introductory chronology briefly summarizes their content. (See id., Ex. 5) Some prominent excerpts are as follows:

- 3/31: New Student Intake/Observations by a Spring Creek staffer: "I saw that she has cuts on her arms and am not sure that she won't try it again."
- 4/1: Spring Creek's Admission Database states that Karlye is positive for "Suicide Thoughts/Talks."
- Undated: Spring Creek's Admission Assessment questionnaire shows Karlye's statement of reasons for being placed at the school as "depressed, cutting, suicide."
- 4/25: "Karlye told girls she wanted to kill herself ... Placed on high risk. ... Hit the wall. Karlye crying hysterically."
- 4/30: Karlye writes in her Daily Info. Sheets: "Mom, I am not doing good here I am struggling so much. I really, really, really, really, really, really wish to have a therapist. Please!!!!!!"
- 5/1: "Was really depressed. Told student Heather Heffy that she didn't want to live. That if she died today she wouldn't care."

- 5/3: Karlye is placed in “intervention” (solitary confinement) for depression. “Said she hates herself, no one cares about her. Apparently cut her arm with a fork.”
- 5/4: “Self-inflicted wound on arm.” Removed to intervention twice.
- 5/7 to 5/27: Almost daily notations of “need to continue high risk.” Additional mentions of Karlye being “withdrawn,” “emotional,” “distant,” “really down,” frustrated,” “[f]lipping out,” “[s]tarting to throw fits more often.”
- 5/27: “Karlye told student Heather Heffey that she wished abuse would happen to her because then she would be dead and wouldn’t have to deal with life.”
- 5/28 to 6/15: Continual notations of “need to continue high risk.” Additional mentions of Karlye being “[v]ery down,” “[v]ery rough day,” “[s]itting in corner crying,” “[n]o relationships,” “[s]cludes herself.”
- 6/17: Karlye draws pictures of a girl hanging herself and writes that she wants to die.
- 6/18: Karlye is voted off high-risk status, after writing that she hurts herself, doesn’t seem to know why, sometimes doesn’t care and it scares her.
- 7/4 to 8/9: At least 19 separate episodes where Karlye is taken to intervention, often with notes of being physically restrained by staff. Additional mention of “[y]elling and cussing ‘I hate my life,’” “[w]ent through moods, angry, hateful, quiet. Unstable;” “[c]rying hysterically … [p]ounding on floor;” “[u]pset, crying.”
- 7/22: Karlye writes in her Daily Info. Sheets: “Well Mom I can’t do this school anymore I can’t it’s to hard for me. I just have given up I am [unintelligible] lifeless, drained no [unintelligible] to work never have probably never will. I am sorry. You’ll probably never see me again.”
- 8/17 to 8/30: Karlye is put on the “bucket challenge,” having to carry a bucket

everywhere with rocks added to it for every consequence she receives.

- 8/19: Karlye writes an Academic Action Request: “Having problems staying focused. Cannot concentrate. Hard for me to learn on my own. I have been on probation ever since I have been here for 4 ½ months. I have been stuck in “health” course on the same chapter since 7/17/04.”
- 8/27: Karlye tries to hang herself from her bunk with a sheet.
- 8/28: Karlye refuses to get up from her bunk, then is put on “high risk” status for punching walls and doors, inflicting injury.
- 8/29: “Very quiet. Struggling with mom and wanting to kill herself.”
- 8/30: Karlye self-inflicts an injury to her arm. She states that she is “tired of living, hates her life, doesn’t want to work.”
- 9/1: “Karlye talked a lot about killing herself.” She is taken to intervention, “[p]unching things and yelling;” “[c]rying, wants therapist, suicidal;” “While in intervention all Karlye would talk about is killing herself and how she could do it! She was very dramatic and depressed all day!”
- 9/1 to 9/24: At least 8 separate episodes where Karlye is placed in intervention. Additional mentions of “upset, crying;” “refusal to move from bed and refusing to talk;” “I want to freaking kill myself;” “hates herself,” “hates everyone in her cabin.”
- 9/7: Karlye writes in her Daily Info. Sheets: “I believe this place is not helping me. I never talk I don’t do school I am way to stressed. ... I believe the NIBH [mental hospital] would be a better place for me I can’t stand going to bed thinking of death ...”
- 9/15: “Rapid mood change. Sad. Depressed. Self inflicted injury at 8:37 pm.”
- 9/23: Karlye fights with other girls in the cabin, tries to bite staff, and is held down by

multiple people.

- 9/24 and 9/29: Karlye attempts to run away.
- 10/4: Karlye is taken off high-risk status by the votes of seven staffers, after signing a "Safety Contract."
- 10/6: Karlye writes: "I hate school. I hate being self taught. I hate not having a teacher teaching. This proves my theory – I am stupid. Everything is a bloody consequence! This place should burn in hell."
- 10/7: Karlye commits suicide after being left alone.

H. Expert Opinion: Negligence at Spring Creek Lodge

Plaintiff's experts reviewed the foregoing records. They unequivocally identified negligence by Spring Creek Lodge as having helped cause Karlye's death. (Ex. 2, Bellonci Depo., pp. 154-64, 172-73, 226-27; Ex. 3, Quinnett Depo., pp. 99-129) Among other points which they stated were these:

- untrained staff. The standard of care required that Spring Creek's staff have training in the presentation, signs, symptoms, care and treatment of suicidal youth. (Ex. 2, Bellonci Depo., pp. 114-15; Ex. 3, Quinnett Depo., p. 105) Spring Creek provided no such training. (Ex. 6, Cameron Pullan Depo., pp. 113-14) The lack of training was seen in the failure to respond to signs of depression and suicidality (Ex. 2, Bellonci Depo., pp. 174-75) Instead, "you see a suicide warning sign and you script this off as more manipulation." (Ex. 3, Quinnett Depo., p. 129)
- inadequate screening. Spring Creek should have recognized at the outset that it couldn't meet Karlye's needs, and should have screened her from admission. (Ex. 2, Bellonci Depo., pp. 48, 123-24) The "Suicide Thoughts/Talk" which were mentioned

in her admission record and the staffer's observation of cuts on her arms should have been "a red flag to do more due diligence." (Ex. 3, Quinnett Depo., pp. 113-16) Spring Creek's inaction under these circumstances failed to satisfy "even the lowest threshold of standard of care." (Ex. 2, Bellonci Depo., pp. 118-20)

- lack of response to ongoing symptoms. The experts were incredulous at Spring Creek's failure to respond to worsening symptoms for six months. "Here were all these observations made by Spring Creek staff," revealing "an Axis I psychiatric illness in full bloom right in front of their eyes." (Ex. 3, Quinnett Depo., pp. 63, 62)

More specifically:

A youth who is experiencing depression in the past and in the present, who has had a history of making suicide attempts, and who was cutting, who was repeatedly talking about being hopeless and helpless, who was repeatedly talking about the program not meeting her needs, who was going so far as to ask to be transferred to a psychiatric facility, who showed clear signs of deterioration in her mental health functioning and whose only response by the program was a punitive one, including asking her to carry a bucket full of rocks for a week despite a history of back injury, is woefully inadequate by any standard of care.

(Ex. 2, Bellonci Depo., pp. 50-51 (emphasis added)

- dismissal of symptoms as "manipulative." The experts deplored Spring Creek's dismissal of Karlye's symptoms as teenage "manipulation." (Ex. 3, Quinnett Depo., pp. 60-61, 125, 129; Ex. 2, Bellonci Depo., p. 172) Telling Karlye's mother that she was manipulative violated the standard of care and induced her to think that Karlye was engaged in "a typical adolescent struggle." (Ex. 3, Quinnett Depo., p. 61; Ex. 2, Bellonci Depo., p. 172)
- punishment of suicidal behavior. Spring Creek punished suicide attempts by taking away all a student's points. (Ex. 11, Manning Depo., pp. 73-75) It repeatedly

punished Karlye for symptoms of suicidality and depression. (Ex. 2, Bellonci Depo., pp. 136-139) Such action “violates any standard of appropriate mental health care.” (*Id.*, p. 138)

I. Lichfield's Organization: "Like a McDonald's Franchise"

In assessing responsibility for this negligence, the court must assess the relationships existing among the Defendants. As Plaintiff showed in her earlier briefs, Spring Creek Lodge was compelled to sign contracts with various entities controlled by Lichfield. (See Pl. Br. Opp. Def. Mot. for S. J., pp. 4-5; Ex. 6, Cameron Pullan Depo., pp. 40-54; Ex. 7, Chaffin Pullan Depo., pp. 13-15, 21-23) Subsequent discovery has established further details about these entities and Lichfield's control:

- Defendant Peacox Enterprises, LLC owned the land and buildings and leased them to Spring Creek for \$25,800 per month. The lease required Spring Creek to use the property for a school belonging to WWASP. (Ex. 6, Cameron Pullan Depo., pp. 29, 38-39) Lichfield owned 60 to 65% of Peacox in 2004. (Ex. 12, Lichfield Depo. vol. II, p. 106-09)
- Defendant National Contract Services, LLC, was primarily owned by Lichfield. (*Id.*, pp. 20-25) Spring Creek's gross income in 2004 was roughly \$17 million, of which some \$5.8 million went to National. Most of the profits were deposited in a Lichfield Family Trust. (*Id.*, pp. 20-29)
- Defendant Teen Help is primarily owned by one of Lichfield's companies. (*Id.*, pp. 67-69) National contracted with Teen Help to market Spring Creek, and Teen Help was paid \$1,200 per enrollment. (*Id.*, pp. 71-80)
- WWASP itself was organized as a nonprofit entity, with Lichfield and his associate

Brent Facer as trustees. (*Id.*, pp. 67-69) Lichfield and Facer subsidized WWASP with very large transfers of cash from National (Ex. 13, National's minutes of 10/2/02, resolving to pay WWASP up to \$170,000.00 per month to fund its budget) WWASP's president, Ken Kay, acted at the bidding of Lichfield and Facer. (Ex. 14, Lichfield Depo. vol. I, pp. 42-44)

Lichfield describes his organization as being "like a McDonald's franchise." (*Id.*, p. 75) A letter to parents states that "all the Programs and Schools follow the same successful program model." (Ex. 15, Utah Depo. Ex. 102, pp. 58-59)

Lichfield believes that he and his colleagues know more about running boarding schools than anyone in the country. (Ex. 14, Lichfield Depo. vol. I, pp. 14-15) Ken Kay, the president of WWASP, however, was quoted in the *Rocky Mountain News* as stating candidly:

These people are basically a bunch of untrained people who work for this organization so they don't have credentials of any kind. He could be leading these kids to long -- we could be leading these kids to long-term problems that we don't have a clue about because we're not going about it the proper way. How in the hell can you call yourself a behavior modification program, and that's one of the ways it's marketed, when nobody has the expertise to determine is this good, is this bad.

(Ex. 12, Lichfield Depo. vol. II, pp. 189-90 (emphasis added)) Kay told Lichfield that this remark was "totally taken out of character" and not what he said. (*Id.*, p. 192)

J. The WWASP Defendants' Control of Spring Creek Lodge

Documents produced by the WWASP Defendants in this litigation demonstrate their control over Spring Creek Lodge and the other schools. Among other pertinent matters are these:

- Designation of all the schools and associated entities as "the Company." The directors and employees of all the schools were compelled to sign Nondisclosure

Agreements and Non-Compete Agreements. (Ex. 15, Utah Depo. Ex. 102, pp. 41-43)

These documents designate "all member and affiliate programs of World Wide Association ... as, collectively, 'the Company.'" (Ex. 15, Utah Depo. Ex. 103) They forbid "competition with the business of the Company" and also forbid disclosure of the Company's "Protected Information," including, e.g., "staff training courses," "the Company's self-directed process for students," "seminars and workshops used by the Company," and "enrollment scripts and dialogues." (See id.)

- Lichfield's control of the WWASP Defendants. Numerous e-mails show the heads of corporate Defendants in this matter deferring to Lichfield in the most obsequious terms. See, e.g., Ex. 15, Utah Depo. Ex. 102, p. 1 (WWASP's Ken Kay tells Lichfield: "Let me know if I should have Mardi enter this stuff into the minutes. I will do nothing until you tell me to in that area ... I will do as directed"); p. 15 (Kay tells Lichfield: "I don't know if the money is still in that old account. I will not contact anyone regarding this without you directing me to do so. You may have already handled it, or just want to keep it silent. If we do need an attorney, I would not use a local one"); p. 84 (Teen Help's director Jean Foye tells Lichfield: "[T]he major expenditures from the Teen Help budget were per your instruction. ... I don't authorize anything else coming out of the budget other than what I was told"); and other e-mails from Kay and Foye discussed below.
- control of the schools: public relations. Lichfield responded to allegations brought against the schools in April 2004 with an e-mail to WWASP's Kay. He demanded immediate production of "[t]he Honesty Report on each child moved," "[t]hree or more affidavits from Staff who worked with each child named and can verify that the

allegations are false," and "two or more statements from students who know the student and can counter their allegations," concluding "THIS NEEDS TO BE GONE OVER AND COMMITTED TO IN THE CONFERENCE CALL TOMORROW!!!" (Ex. 15, Utah Depo. Ex. 102, p. 10) Thus, Lichfield peremptorily ordered action to be taken by the individual schools, and Kay responded: "It shall be done!" (See *id.*)

- control of the schools: reducing "discharges." Numerous e-mails show the WWASP Defendants coercing the schools to reduce the number of "discharges," or students who leave the program. Thus, e.g., (1) a 2004 e-mail sets discharge-reduction goals for seven schools, including Spring Creek ("Chaffin SCL -- you had 57 discharges -- the goal is 35 discharges in the next 10 weeks"); (2) a 2004 e-mail from Lichfield demands to know "the total number of early discharges" and "how many Accountability Meetings" were held with the Family Representatives (the liaisons with parents) at each school; (3) WWASP offers a fee discount to schools that hold such Accountability Meetings ("Do the FRs feel that they will have to be accountable for any family that leaves?") (Ex. 15, Utah Depo. Ex. 102, pp. 17, 93, 98)
- control of the marketers: scripting conversations with parents. Jean Foye submitted Teen Help's telemarketing "scripts" to Lichfield for approval. One script directed the marketer to "MAXIMIZE problems" related by individual parents and to recommend "immediate intervention." (Ex. 15, Utah Depo. Ex. 102, p. 62) Another (adaptable to any problem mentioned by a parent) reads in part:
 1. "Before I tell you about Spring Creek, tell me what you're experiencing with your child".
 2. Then say "when I hear you say _____ is going on with your child, I believe that the longer you let it go, the greater chance there will be for disaster. I strongly recommend that you get help for your child now. The longer it continues, the harder it is to bring them back".

3. Explain the options available.

(*Id.* at p. 73 (emphasis added)) No mention is made of problems like suicidality which Spring Creek and other schools might be incompetent to treat.

- control of the schools: direct interventions. Various e-mails document Lichfield and his entities intervening directly at schools. Some deal with ongoing problems at Casa by the Sea (e.g., "The governor is fully brief[ed] but may find it necessary to be very cautious in espousing the positivity surrounding the situation;" "Bob suggested an immediate visit to the Embassy. ASAP!!!!!!!!!!!!"). (Ex. 15, Utah Depo. Ex. 102, pp. 25-28, 86-87, 109) WWASP aggressively promoted transfers of students from Casa to other schools. (*Id.*, pp. 25, 67) Such transfers led to overcrowding at Spring Creek, with students sleeping on the floor. (Ex. 16, Humphrey Depo., pp. 59-64, 148)
- control of Spring Creek Lodge. Shortly after Karlye's suicide, WWASP's Kay sends Lichfield an e-mail demonstrating their control over policy there:

Spring Creek Lodge: there [sic] documentation on the incident is outstanding, literally about 12 inches high prior to her suicide, police seem to be impressed, state seems to be OK but you never know. Staff seem to be in good shape. My recommendation would be for them to maybe drop 30-40 kids and let them regroup and retrain and let them implement new policies that they have identified to be practical and necessary.

(Ex. 15, Utah Depo. Ex. 102, p. 28 (emphasis added))

ISSUES

I. SHOULD THIS COURT GRANT PARTIAL SUMMARY JUDGMENT FINDING ALL THE DEFENDANTS LIABLE FOR JOINT TORTIOUS CONDUCT?

II. SHOULD THIS COURT GRANT PARTIAL SUMMARY JUDGMENT FINDING NEGLIGENCE AS A MATTER OF LAW?

ARGUMENT

Summary Judgment Standards

Under M. R. Civ. P. 56(c), judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Corporate Air v. Edwards Jet Ctr.*, 2008 MT 283, 345 Mont. 336, 190 P.3d 1111, ¶ 24. A material fact is a fact that involves the elements of the cause of action or defenses at issue to an extent that necessitates resolution of the issue by a trier of fact. Id.

The party moving for summary judgment has the initial burden of establishing both the absence of genuine issues of material fact and entitlement to judgment as a matter of law.

Corporate Air, ¶ 25. If the moving party meets this burden, then the burden shifts to the nonmoving party to establish that a genuine issue of material fact does exist. Id. If no genuine issues of material fact exist, the district court then determines whether the moving party is entitled to judgment as a matter of law. Id.

I. THIS COURT SHOULD GRANT PARTIAL SUMMARY JUDGMENT FINDING ALL THE DEFENDANTS LIABLE FOR JOINT TORTIOUS CONDUCT.

A. Montana Law on Joint Tortious Conduct

Montana recognizes joint tortious conduct as a ground for imposing joint liability upon multiple defendants. The leading case is *Sloan v. Fauque*, 239 Mont. 383, 784 P.2d 895, 896 (1989) ("where two or more persons commit tortious acts in concert, all are liable for the tortious acts of anyone").

In *Sloan*, a group of youths got into a car and chased another carload of youths, intending to beat them up. A collision resulted from the chase. The Montana Supreme Court affirmed a

summary judgment holding each defendant liable for the torts of all:

Fauque and Zenzius encouraged Barnes's actions and gave him substantial assistance, thus, acting in concert with the occupants of the Barnes vehicle and are subject to liability. Summary judgment was proper.

784 P.2d at 897 (emphasis added).

The present case is analogous to *Sloan*. The Defendants here are like the occupants of the vehicle in that case. All voluntarily joined the group, encouraged each other, and gave each other substantial assistance in breaching a duty to Karlye Newman.

Sloan applied § 876 of the Restatement (Second) of Torts. 784 P.2d at 896. That section applies alternative tests for liability, as shown below. Plaintiff will explain how these tests apply to each of the Defendants here.

B. Restatement § 876

§ 876 of the Restatement (Second) of Torts provides as follows:

§ 876. Persons Acting in Concert

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he

- (a) does a tortious act in concert with the other or pursuant to a common design with him, or
- (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
- (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

(emphasis added)

The section, thus, provides alternative tests for joint liability. Subsections (a) and (c) require tortious action on the part of each defendant.

Subsection (b), however, imposes liability for conduct which is not tortious in itself. The defendant is liable for giving "substantial assistance or encouragement" to a tortfeasor, with

knowledge of the tort. This form of joint liability is known as "civil aiding or abetting."

§ 876 liability often is applied to commercial entities acting in concert. See, e.g., *Adelphia Recovery Trust v. Bank of America, N.A.*, 624 F. Supp. 2d 292, 308-14 (S.D.N.Y. 2009) (banks gave substantial assistance to participants in a commercial fraud).

In the present case, each Defendant indisputably gave "substantial assistance or encouragement" to torts against Karlye Newman. Summary judgment should be granted on that point, as shown below.

C. Cases Granting Summary Judgment for Assisting or Encouraging Torts

Sloan affirmed a partial summary judgment holding defendants jointly liable in tort. The record conclusively showed that each defendant gave a tortfeasor "substantial assistance or encouragement." See 784 P.2d at 896-97.

Other courts have granted summary judgment against commercial actors acting in concert. The facts of one such case are strikingly similar to those of record here.

In *Zimmerman v. Cambridge Credit Counseling Corporation*, 529 Fed. Supp. 2d 254 (D. Mass. 2008), consumers claimed that they were misled by credit counselors. They sued a network of defendants similar to the defendants here -- a dominant individual and numerous corporations controlled by him. As in the present case, the defendants used telemarketers and sales scripts to send consumers to each other. Thus:

John Puccio created and controlled CCCC, BCMC, CBBPC, BC Mass, Brighton DMS, and Debt Relief Clearinghouse, Ltd. ("DRC"). Until he left the board of CCCC, he also determined the terms of all contracts and business dealings among CCCC, BCC, BCMC, DRC, Brighton DMS, BC Mass, Cypress Advertising and Promotions, Inc. ("Cypress"), Southfork Asset Management Corp. ("Southfork"), and First Consumers.

* * *

Customers of CCCC, BCMC, and CPPBC would speak to BC Mass

employees when they called any of these companies. The BC Mass staff were trained to speak about the benefits of re-aging accounts, while CCCC, BCMC, CBBPC, and BC Mass personnel were all coached to answer questions regarding how joining DMP might affect a customer's credit score. The standardized sales scripts used by these entities directed employees to tell callers that with respect to enrolling in a DMP,

You're already behind on your bills so this can only help your credit. By making your payments on time to us we will be able to bring your accounts back to a current status, plus establish a credit reference to back you up when you apply for future financing.

* * *

If a customer inquired into the possibility of settling his or her accounts (and thus ending the relationship with the company), the script for BCMC, CCCC, and CBBPC prescribed a message that

Settlements can damage your credit almost as much as a bankruptcy ... Our program is designed to get you out of debt and protect your credit rating.

529 F. Supp. 2d at 260-61 (emphasis added).

Zimmerman entered summary judgment holding the dominant individual, his brother, and ten of their corporations liable for statutory torts. It held:

Together these companies, run by the Puccios, engaged in a single overarching scheme to attract customers using CCCC's nonprofit status, charge them upfront fees and otherwise behave in contravention of CROA [the Credit Repair Organizations Act], and funnel the resulting profits to the Puccios through their entwined finances. Thus the related entities are jointly and severally liable for the damages directly inflicted by CCCC, CBBPC, BCMC, and BC Mass.

Id. at 280 (emphasis added).

This court should similarly enter summary judgment holding all the defendants liable for one another's torts. The record demonstrates that each defendant gave "substantial assistance or encouragement" to the rest. This will be demonstrated below.

D. Joint Tortious Conduct of the Individual Defendants

1. Spring Creek Lodge

The record shows that Spring Creek Lodge committed "tortious conduct in concert with ... others or pursuant to a common design." See Restatement (Second) of Torts§ 876(a). This is true for both the entities (the LLC and the subsequent corporation) which have run the school.

Unrebutted, unequivocal expert testimony identifies negligent acts and omissions which caused Karlye Newman's death. These acts and omissions were committed by Spring Creek Lodge "pursuant to a common design" with the other Defendants. Among other matters:

- Spring Creek improperly admitted Karlye to its student body. Spring Creek had notice that she was suicidal, and should have known that it was incompetent to treat her. (Ex. 2, Bellonci Depo., pp. 48, 118-24; Ex. 3, Quinnett Depo., pp. 113-16) It acted pursuant to a common design which incentivized admitting students without proper screening. (Ex. 2, Bellonci Depo., pp. 35, 42-44, 65, 82-83, 89-94, 142-43)
- Spring Creek gave its staff absolutely no training in suicide prevention. (Ex. 6, Cameron Pullan Depo., pp. 113-14; Ex. 16, Humphrey Depo., p. 16; Ex. 2, Bellonci Depo., p. 36; Ex. 3, Quinnett Depo., p. 125) This omission occurred through a common design in which "[s]igns of mental illness are seen as willful behavior" and are treated with punitive interventions that have no scientific basis. (Ex. 1, Salavitz Aff., ¶¶ 24-25; Ex. 2, Bellonci Depo., pp. 69, 136-39; Ex. 3, Quinnett Depo., pp. 105-06)
- Spring Creek failed to respond to Karlye's symptoms as they worsened for six months -- a "psychiatric illness in full bloom right in front of their eyes." (Ex. 3, Quinnett Depo., pp. 62-63) The symptoms are comprehensively documented in scores of Spring Creek records. (Ex. 2, Bellonci Depo. Ex. 5, 6) Instead of responding properly, Spring Creek punished Karlye for these symptoms, pursuant to the common

design. (Ex. 2, Bellonci Depo., pp. 136-39) This conduct "violates any standards of appropriate mental health care." (*Id.*)

These unrebutted facts establish joint tortious conduct. As in *Sloan* and in *Zimmerman*, the court should enter partial summary judgment finding Spring Creek Lodge jointly liable for all torts committed by any of the Defendants.

2. Cameron and Chaffin Pullan

The record conclusively shows joint tortious conduct by the Pullan brothers. Evidence proving their negligence was set out in the Plaintiff's prior brief and is supplemented in this brief. Among other matters:

- Both brothers stated that they were concerned that they "didn't have money enough to take care of the kids" because so much was paid to Lichfield's companies. (Ex. 6, Cameron Pullan Depo., pp. 72, 144-45; Ex. 7, Chaffin Pullan Depo., pp. 41-42)
- Students at Spring Creek Lodge, including Karlye, made complaints of hunger. (Ex. 16, Humphrey Depo., p. 115; Ex. 2, Bellonci Depo. Ex. 5, 6: records of 8/13 and 8/17) Yet the brothers themselves took large salaries, bonuses, and dividends in concert with other Defendants. (Ex. 6, Cameron Pullan Depo., pp. 148-152; Ex. 7, Chaffin Pullan Depo., p. 52)
- Each brother profited from maximizing enrollment, by taking a large monthly per-student bonus. (Ex. 6, Cameron Pullan Depo., pp. 148-51; Ex. 7, Chaffin Pullan Depo., p. 52) Spring Creek was overcrowded, with students (including Karlye) sleeping on the floor. (Ex. 16, Humphrey Depo., pp. 59-64, 148; Ex. 2, Bellonci Depo., Ex. 5, 6: records of 8/29; 8/30; 9/19) The bonuses created a conflict of interest and incentivized the enrollment of students which Spring Creek was

unqualified to serve. (Ex. 2, Bellonci Depo., pp. 42-4; 82-3; 142-3)

- The brothers maintained a web site claiming that Spring Creek used "the most effective methods" for dealing with "depression, stress, and lonely feeling." (Ex. 10, Manley Aff., Ex. A, p. 2) Cameron approved brochures promoting the school as appropriate for "suicidal" students. (Ex. 6, Cameron Pullan Depo., pp. 66-67; Ex. 2, Bellonci Depo. Ex. 8, p. 1) Yet they gave their staff no training in suicide assessment or in working with emotionally disturbed students -- a clear violation of standards of care. (Ex. 16, Humphrey Depo., p. 16; Ex. 6, Cameron Pullan Depo., pp. 97, 113-14; Ex. 2, Bellonci Depo., pp. 114-16; Ex. 3, Quinnett Depo., pp. 104-05; 123-28)
- Both brothers were directly involved in "challenges," verbal abuse of students, and punitive interventions which foreseeably could aggravate depression and suicidality. (Ex. 16, Humphrey Depo., pp. 83-86, 116; Ex. 6, Cameron Pullan Depo., pp. 117-23; Ex. 7, Chaffin Pullan Depo., pp. 55-58; Ex. 2, Bellonci Depo., pp. 136-39)

These facts prove joint tortious conduct, as a matter of law, under each of the alternative tests under § 876. The brothers committed "tortious conduct in concert with ... others or pursuant to a common design." In the alternative, they gave "substantial assistance" to other Defendants in their breaches of duty to Karlye.

3. Robert Lichfield

The record shows that Robert Lichfield dominates all the other Defendants just as John Pucci dominated all the other defendants in the *Zimmerman* case. See 529 F. Supp. 2d at 260-61. Irrefutable evidence establishes joint tortious conduct on this point. Among other matters:

- Lichfield views his organization as being "like a McDonald's franchise." (Ex. 14, Lichfield Depo. vol. I, p. 75) All the programs and schools associated with him

"follow the same successful program model." (Ex. 15, Utah Depo. Ex. 102, pp. 58-59) Lichfield periodically visited Spring Creek to make sure his policies were followed. (Ex. 7, Chaffin Pullan Depo., pp. 29-31) Unrebutted expert testimony shows that Lichfield's program model is "absolutely contraindicated" for youths like Karlye Newman, and violates the standard of care. (Ex. 2, Bellonci Depo., pp. 39-41, 52-53, 57-58, 62-63, 69, 77-80, 136-39, 163-64, 182-83, 281-89; Ex. 3, Quinnett Depo., pp. 99-100, 105-06; Ex. 5, Jakupcak Depo., pp. 37-40)

- Lichfield and an associate owned Spring Creek Lodge through corporate entities. (Ex. 7, Chaffin Pullan Depo., pp. 11-12; Ex. 6, Cameron Pullan Depo., pp. 19-20) Lichfield's family later acquired a majority interest, with Cameron Pullan as minority owner. (Ex. 6, Cameron Pullan Depo., pp. 25-33) Lichfield continued to exercise control over Spring Creek, presenting Cameron with contracts to sign which Cameron could not refuse or negotiate. (Ex. 6, Cameron Pullan Depo., pp. 40-54)
- Lichfield compelled Spring Creek to sign contracts diverting excessive fees to corporations which he controlled (National Contract Services, Teen Help, WWASP, etc.). (Ex. 6, Cameron Pullan Depo., pp. 40-54) Spring Creek thus "didn't have money enough to take care of the kids." (*Id.*, pp. 72, 144-45; Ex. 7, Chaffin Pullan Depo., pp. 41-42)
- Lichfield compelled directors and employees of all the schools to sign Nondisclosure and Non-Compete Agreements. (Ex. 15, Utah Depo. Ex. 103 and Ex. 102, pp. 41-43) These agreements designated all the various WWASP-affiliated programs as "the Company." (Ex. 15, Utah Depo. Ex. 103)
- Lichfield controlled the operations of Teen Help, which improperly marketed Spring

Creek and improperly incentivized admissions. One of Lichfield's companies was Teen Help's principal owner. (Ex. 12, Lichfield Depo. Vol. II, pp. 67-69) The evidence shows that Lichfield controlled all of its expenditures. (Ex. 15, Utah Depo. Ex. 102, pp. 60, 84, 85) He also approved telemarketing scripts which instructed Teen Help marketers to "MAXIMIZE problems" and to promote the schools in response to any problem a parent might mention. (*Id.*, pp. 62, 73)

- Lichfield controlled the operations of WWASP. (See, e.g., Ex. 15, Utah Depo. Ex. 102, pp. 1, 15) Through WWASP, he exercised control over crucial matters at the schools. Among other things, he coerced the schools to reduce the number of "early discharges." (*Id.*, pp. 17, 18, 93, 98) He also aggressively coerced the schools to attack the honesty of students who brought allegations against them. (*Id.*, pp. 10, 30-36) The record specifically shows that he controlled policies at Spring Creek Lodge. (See id. at p. 28; Ex. 6, Cameron Pullan Depo., pp. 40-54; Ex. 7, Chaffin Pullan Depo., pp. 29-31)

- Lichfield controlled the operation of National, which he used to subsidize WWASP. Thus, National's minutes show Lichfield arranging that National "make up difference for WWASP in whatever comes in to maintain \$170,000.00 per month. This will ensure that WWASP can maintain it's [sic] monthly budget." (Ex. 13, National's minutes of 10/2/02)

This evidence shows, as a matter of law, that Lichfield was guilty of joint tortious conduct. He created the "common design" through which acts of negligence were committed, and he gave "substantial assistance and encouragement" to other negligent actors. As in *Sloan* and in *Zimmerman*, this court should enter summary judgment holding Lichfield jointly and

severally liable for all the Defendants' torts.

4. Teen Help, Inc.

The record conclusively shows that Teen Help was guilty of joint tortious conduct.

Among other matters:

- Teen Help issued scripts for its telemarketers to use in recruiting children for Spring Creek Lodge and other schools. The telemarketers were told to "MAXIMIZE problems" and to use any problem mentioned by parents as grounds for enrollment in the schools. (Ex. 15, Utah Depo. Ex. 102, pp. 62, 73)
- Karlye's mother called Teen Help before enrolling Karlye at Spring Creek Lodge. She reported Karlye's suicide threats and self-inflicted injuries to the marketer. (Ex. 9, Newman Depo., pp. 128, 164-67, 252-58, 374-76) Teen Help's records confirm that these statements were made. (Ex. 9, Newman Depo. Ex. 5) The Teen Help marketer told Judith that Spring Creek would "be happy to take her." (Ex. 9, Newman Depo., p. 131)
- Unrebutted expert testimony states that this marketing was improper. Suicidal students should not be recruited to a facility which is unqualified to treat them. (Ex. 3, Quinnett Depo., p. 125; Ex. 2, Bellonci Depo., pp. 36, 65, 84)
- Teen Help systematically concealed aspects of Lichfield's operation from the parents. Marketers were told: "If you give parents information about our inner workings (commissions, who gets the loan, etc.), there will be a \$250 fine the first time, \$500 the 2nd time, \$1,000 the 3rd time." (Ex. 15, Utah Depo. Ex. 102, p. 82) They also were told that they "should not tell parents our in-house policies and procedures, i.e. that the first Rep that gets the loan gets the commission, etc." (Id., p. 44)

- Uncontradicted expert testimony states that programs serving troubled youth should be governed by standards of transparency. Thus, "programs need to be crystal clear about who they are, who they serve, who they don't serve, [and] how they will make that determination." (Ex. 2, Bellonci Depo., pp. 171-72) Teen Help clearly violated that standard.

Based on this record, Teen Help is liable for joint tortious conduct. Its use of scripts is directly analogous to the use of scripts which supported the granting of summary judgment in *Zimmerman*. See 529 F. Supp. 2d at 260-61. Teen Help demonstrably took part in a "common design" and gave "substantial assistance and encouragement" to other tortious actors.

5. Premier Educational Systems and WWASP

The record shows that WWASP and its successor Premier were primary agencies through which the "common design" was carried out. Among other matters:

- Under the terms of contracts imposed on it by Lichfield, Spring Creek Lodge was required to be affiliated with WWASP. (Ex. 6, Cameron Pullan Depo., pp. 38-39; Ex. 15, Utah Depo. Ex. 107) Spring Creek paid WWASP an affiliation fee of \$75 per student per month. (Ex. 7, Chaffin Pullan Depo., p. 15)
- All WWASP schools use the same basic model of operation. (Ex. 6, Cameron Pullan Depo., p. 64) Likewise, parents are told that all the schools associated with Premier "follow the same successful program model." (Ex. 15, Utah Depo. Ex. 102, pp. 58-59) Unrebutted expert testimony shows that this model violates standards of care. (Ex. 2, Bellonci Depo., pp. 28-30, 57-58, 62-63, 66-67, 77-80)
- WWASP coerced Spring Creek and other schools to reduce the number of "discharges," or students leaving the program. (Ex. 15, Utah Depo. Ex. 102, p. 17) It

gave financial incentives to schools for making Family Representatives "feel that they will have to be accountable for any family that leaves." (Id., p. 98)

- When Casa by the Sea was closed, WWASP instigated transfers of dozens of students to Spring Creek. (See id., p. 25) These transfers caused crowding, with students sleeping on the floor, loss of "quality of care and concern" for the students, and staff that was "completely taxed." (Ex. 16, Humphrey Depo., pp. 59-64, 148)
- Premier was formed "with the same three people that were in charge of WWASP" and with the same address; the company had no employees. (Ex. 17, Kay Depo. I, pp. 73-76) Premier provided Spring Creek with exactly the same educational curriculum that WWASP had formerly provided. (Id.) Spring Creek was compelled to contract with Premier by Robert Lichfield, and could not consider alternative providers. (Ex. 6, Cameron Pullan Depo., pp. 48-49, 53-54) Unrebutted testimony shows that this educational model was completely inappropriate for a student like Karlye Newman. (Ex. 2, Bellonci Depo., pp. 182-83, 235-39; Ex. 5, Jakupcak Depo., pp. 37-40)

These facts prove joint tortious conduct as a matter of law. WWASP and Premier were primary agents in coordinating the Defendants' common design. They clearly gave "substantial assistance or encouragement" to Spring Creek and to other tortious actors.

6. Peacock

The record shows that Peacock Enterprises, LLC was guilty of joint tortious conduct. The pertinent evidence is as follows:

- Robert Lichfield and his wife were the majority owners of Peacock. (Ex. 12, Lichfield Depo. Vol. II, pp. 106-09)
- Peacock owned the land and buildings of Spring Creek Lodge. It leased them to

Spring Creek Lodge, LLC and then to Spring Creek Lodge, Inc., on condition that they be used for a WWASP school. (Ex. 6, Cameron Pullan Depo., pp. 29-31)

These facts prove, as a matter of law, that Peacock was an agent of Lichfield and WWASP in accomplishing their common design. Peacock gave "substantial assistance" to Spring Creek and other tortfeasors in conducting programs mandated by those Defendants which violated standards of care.

7. National

The record shows that National Contract Services, LLC, was guilty of joint tortious conduct. Among other matters:

- Robert Lichfield owned about 80% of National, through another company which he owned. (Ex. 12, Lichfield Depo. Vol. II, pp. 20-25)
- Lichfield compelled Spring Creek to sign a contract with National. (Ex. 7, Chaffin Pullan Depo., pp. 21-23; Ex. 6, Cameron Pullan Depo., pp. 40-43, 53-54) By the terms of that contract, Spring Creek had to pay 33 1/3 % of its gross revenues to National in return for various services (e.g., marketing, promotion, curriculum, and manuals). (Ex. 6, Cameron Pullan Depo., pp. 40-54; Ex. 15, Utah Depo. Ex. 107) The diversion of funds was so great that Spring Creek "didn't have money enough to take care of the kids." (Ex. 6, Cameron Pullan Depo., pp. 72, 144-45; Ex. 7, Chaffin Pullan Depo., pp. 41-42)
- Spring Creek's gross income in 2004 was roughly \$17 million, of which some \$5.8 million went to National. Most of the profits went into a Lichfield Family Trust. (Ex. 12, Lichfield Depo. Vol. II, pp. 26-29)
- By the terms of Spring Creek's contract with National, National had a "free hand to

market, advertise, and promote [Spring Creek] as it deems best appropriate." (Utah Depo. Ex. 107) National therefore was responsible for the brochure which advertised Spring Creek Lodge as suitable for "suicidal" students. (Ex. 15, Utah Depo. Ex. 104) Unrebutted expert testimony shows that Spring Creek was not suitable for suicidal students, and that the marketing was improper. (Ex. 2, Bellonci Depo., pp. 36, 65, 84; Ex. 3, Quinnett Depo., p. 125)

- By the terms of the contract, National provided Policy and Procedure Manuals and staff training materials. (Ex. 15, Utah Depo. Ex. 107) National therefore was responsible for the improper program model which was utilized at Spring Creek and for the inadequate staff training. (Ex. 2, Bellonci Depo., pp. 28-30, 39-41, 52-53, 57-58, 62-63, 69, 77-80, 136-39, 163-64, 231-35; Ex. 3, Quinnett Depo., pp. 99-100)
- By the terms of the contract, Spring Creek agreed to maintain membership in WWASP throughout the contract's lifetime (which was agreed to be "89 years"). (Ex. 15, Utah Depo. Ex. 107) National also subsidized WWASP through very large monthly transfers of cash. (Ex. 13, National's minutes of 10/2/02) National therefore is responsible for the coercive interventions (e.g., to reduce the number of "discharges") imposed by WWASP on Spring Creek.

These facts establish, as a matter of law, that National is liable for joint tortious conduct.

It was an agent in conducting the Defendants' common design. It gave "substantial assistance" to Spring Creek and to other tortious actors.

8. Cabinet Mountain

The record shows that Cabinet Mountain Mental Health, Inc. is liable for joint tortious conduct. Pertinent evidence on this point has been marshaled in a previous brief. (See Pl.

Response Brief in Opp. To Cab. Mtn. Motion for S.J.) Among other matters:

- Cabinet Mountain was controlled by the Pullan brothers, each of whom owned one-third of the company. The Pullans were two of the three directors of Cabinet Mountain (the other being their co-owner, Mike Linderman). (Ex. 18, Linderman Depo., pp. 31-32, 40-41) The company kept no corporate minutes. (Id., p. 44)
- Cabinet Mountain was located on the Spring Creek campus and provided mental health services to Spring Creek. It paid no rent to Spring Creek for its office space. (Id., pp. 34, 152)
- Mike Linderman was clinical director of Cabinet Mountain. Prior to the company's creation, he had been employed by Spring Creek. His duties as director were (1) "providing mental health services to the kids," and (2) "following suit with basically the idea of what Spring Creek was trying to provide to -- to kids and families." (Id., pp. 32-33 (emphasis added))
- To Linderman's knowledge, Spring Creek operated under guidelines promulgated by WWASP. (Id., pp. 75-77) Linderman knew that Spring Creek punished student for "self-inflicts." (Id., pp. 128, 133-34) Unrebutted expert testimony shows that such punishments lack scientific basis, violate the standard of care, and were harmful for Karlye. (Ex. 2, Bellonci Depo., pp. 69, 136-39; Ex. 3, Quinnett Depo., p. 106)
- When Linderman hired a new therapist, the hiring had to be approved by Chaffin Pullan. (Id., pp. 33-34)
- Raul Ribeiro was hired by Cabinet Mountain at the Pullans' suggestion after working for them as a Spring Creek family representative. (Id., pp. 40-41) Ribeiro falsely told Linderman that he had a college degree in social work and that the degree was

"in a box somewhere." Linderman did not require him to produce it. (Id., pp. 41-43)

- After Karlye's suicide, Linderman discovered that Ribiero had lied about being a college graduate. He wanted to fire Ribiero, but the Pullans refused to do so. (Ex. 18, Linderman Depo., pp. 43-44)
- There were "constant" meetings between Spring Creek staff and Cabinet Mountain therapists. However, Spring Creek's records were given to the therapists only if Spring Creek's family representatives "felt they were relevant." (Id., pp. 83-85) The family representatives did not necessarily have any training in mental health. (Id., p. 85)
- In May 2004, Karlye was referred to Cabinet Mountain for crisis intervention after she "self inflicted ... with a fork." (Ex. 19, Witters Depo., pp. 40-44; Ex. 19, Witters Depo. Ex. 19, p. 19) Cabinet Mountain therapist Jean Witters took notes which referred to "old scars," "other past attempts" at suicide, and the fact that Karlye was "Depressed -- since 13 about 3.5 years." (Id.)
- Cabinet Mountain's file on Karlye shows no attempt to follow up Witters's crisis intervention session. (Ex. 19, Witters Depo. Ex. 19) Unrebutted expert testimony states that Cabinet Mountain had a responsibility immediately to call Karlye's mother and to ensure that Karlye got care. (Ex. 2, Bellonci Depo., pp. 64, 213-18).
- Linderman conducted "adoption group" therapy which was attended by Karlye. No records were kept of these therapy sessions except an attendance record for purposes of billing. (Ex. 18, Linderman Depo., pp. 79-81) Unrebutted expert testimony states that the failure to document these sessions violated Cabinet Mountain's standard of care. (Ex. 2, Bellonci Depo., pp. 131-32)

- In September, Karlye had four individual therapy sessions with Ribeiro. (Ex. 19, Witters Depo. Ex. 19, pp. 20-23) Ribiero's notes do not mention the prior crisis intervention. Ribiero says it's "a fair assumption" that he was unaware of the episode. (See *id.*; Ex. 20, Ribiero Depo., p. 29)
- Cabinet Mountain's file on Karlye contains no Spring Creek school records whatsoever -- no record of the suicide threats, the suicidal drawings, the suicide attempts, the weeks on "high risk," the depressive episodes, the confinements in the intervention room. (Ex. 19, Witters Depo. Ex. 19)
- Unrebutted expert testimony states that Cabinet Mountain had a duty to get these records in undertaking to work with Karlye. (Ex. 4, Rosston Depo., pp. 20-22, 34-38, 44-45, 54-57, 62; Ex. 3, Quinnell Depo., pp. 81-82; Ex. 2, Bellonci Depo., pp. 192-97)
- Had Cabinet Mountain gotten Karlye's records, it would have found "huge red flags" indicating "extreme risk." (Ex. 4, Rosston Depo., pp. 62, 69-70) This would have led to a different intervention and a different outcome. (Ex. 2, Bellonci Depo., pp. 74-76, 226-27; Ex. 4, Rosston Depo., p. 87)

These facts establish joint tortious conduct on the part of Cabinet Mountain. It committed negligence pursuant to a common design involving the other actors. The Pullans' conflict of interest and the therapists' status as former Spring Creek employees tied it into this common design. As in *Sloan* and *Zimmerman*, this court should enter summary judgment on joint tortious conduct.

II. THE COURT SHOULD GRANT PARTIAL SUMMARY JUDGMENT FINDING NEGLIGENCE AS A MATTER OF LAW.

The foregoing analysis shows that all the Defendants satisfy one or more of the criteria of Restatement § 876. Some “committed “a tortious act in concert with the other[s] or pursuant to a common design.” At a minimum, each Defendant gave “substantial assistance or encouragement” to a tort.

This analysis depends upon a finding that one or more torts was committed as a matter of law. As in *Sloan* and in *Zimmerman*, the record clearly establishes this point.

Claims of negligence, of course, involve factual issues which ordinarily are for the jury. However, “such factual issues are appropriately determined as a matter of law on summary judgment where reasonable minds could reach but one conclusion.” *Lorang v. Fortis Insurance Co.*, 2008 MT 252, 345 Mont. 12, 192 P.3d 186, ¶¶ 136, 156-57 (ordering partial summary judgment against the defendant as to liability).

In the present case, as in *Sloan*, *Lorang*, and *Zimmerman*, the record mandates partial summary judgment. The evidence of negligence is conclusive. No reasonable mind could deny that one or more Defendants breached a duty to Karlye Newman. Among other matters:

- Admitting Karlye to Spring Creek Lodge violated “even the lowest threshold of standard of care.” (Ex. 2, Bellonci Depo., pp. 48, 118-20, 123-24; Ex. 3, Quinnett Depo., pp. 113-16)
- Punishing Karlye for displaying symptoms of depression and suicidality “violate[d] any standard of appropriate mental health care.” (Ex. 2, Bellonci Depo., pp. 69, 136-39; Ex. 3, Quinnett Depo., pp. 105-06)
- Placing Karlye in a self-teaching program, without regard to her depression and learning disability, keeping her in this program for months when she made no progress, and punishing her failures with solitary confinement violated standards of

care. (Ex. 5, Jakupcak Depo., pp. 37-40, 43-45, 47, 105-06, 122-23, 135-44, 145-46, 148-53; Ex. 2, Bellonci Depo., pp. 182-83, 235-39)

- Failing to train Spring Creek's staff in the presentation, signs, symptoms, and treatment of suicidal youth violated standards of care. (Ex. 2, Bellonci Depo., pp. 114-15, 174-75; Ex. 3, Quinnett Depo., pp. 113-14, 129)
- Spring Creek's failure to respond to six months of continual, worsening symptoms of psychiatric illness "is woefully inadequate by any standard of care." (Ex. 2, Bellonci Depo., pp. 50-51, Ex. 3, Quinnett Depo., pp. 62, 63)
- Cutting Karlye off from contact with her mother violated the standard of care. (Ex. 2, Bellonci Depo., pp. 57-58, 79-80)
- Cabinet Mountain violated its standard of care by (1) failing to contact Judith Newman and ensure that Karlye got care after its initial intervention in May; (2) failing to document its group therapy sessions; and (3) failing to get Karlye's records from Spring Creek and from her previous school and therapist when it undertook to treat her. (Ex. 2, Bellonci Depo., pp. 64, 131-32, 192-97, 213-18; Ex. 4, Rosston Depo., pp. 20-22, 34-38, 44-45, 54-57, 62; Ex. 3, Quinnett Depo., pp. 81-82)

The foregoing matters are unrebutted. This court accordingly should hold as a matter of law that one or more Defendants committed torts against Karlye Newman. As in *Sloan, Lorang, and Zimmerman*, the record clearly establishes grounds for partial summary judgment on this point.

CONCLUSION

This court should enter partial summary judgment holding (1) that one or more Defendants committed torts against Karlye Newman and (2) that all the Defendants are jointly

and severally liable for these torts. As in *Sloan* and *Zimmerman*, the record establishes these points as a matter of law.

DATED this 3 day of February 2010.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served upon the following by mail, hand delivery, overnight service or facsimile transmission:

- U.S. Mail
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- Hand delivery
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